IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12467 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHAMMADHUSAINKHAN ALIAS MOHMAD SIDI CHIRABHAI PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12467 of 2001

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/02/2002

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on the 26th December, 2001, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA

Act" for short), detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration one registered offence against the petitioner and statements of two anonymous witnesses and branded him as a bootlegger. The detaining authority observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to a conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. Learned advocate for the petitioner, Mr. Shukla assails this order on the ground that when the order was passed, the detenu was in judicial custody. The detaining authority observed that though the detenu is in judicial custody, he may apply for bail and may obtain bail and, therefore, his immediate detention is required. This is not a legitimate ground for satisfying that the detenu is required to be detained. He, therefore, urged that the petition may be allowed.

4. Mr. D.P. Joshi, learned Assistant Government Pleader, has opposed this petition.

5. There is no dispute about the factual aspects. When the order of detention was passed, the detenu was in judicial custody. Anticipating an application for bail and grant of bail by a competent Court, the detaining authority deemed it necessary to detain the petitioner. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3675 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgment would be squarely applicable to the facts of the present case. Hence, this petition deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 26th December, 2001, passed against the detenu is hereby quashed and set aside. The detenu-Mohmadhusainkhan @ Husain Dadhi Mohmadsidique @ Chinabhai Pathan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

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